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READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

Approved by OMB 3060-0589
Page No 1 of 1

(1) LOCKBOX # 979091

SPECIAL USE ONLY
FCC USE ONLY

SECTION A – PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card): Wiley Rein LLP

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents): 7,365.00

(4) STREET ADDRESS LINE NO. 1: 1776 K Street, N.W.

(5) STREET ADDRESS LINE NO. 2:

(6) CITY: Washington | (7) STATE: DC | (8) ZIP CODE: 20006

(9) DAYTIME TELEPHONE NUMBER (include area code): 202.719.7000 | (10) COUNTRY CODE (if not in U.S.A.):

FCC REGISTRATION NUMBER (FRN) REQUIRED

(11) PAYER (FRN): 0002151744 | (12) FCC USE ONLY

IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)
COMPLETE SECTION BELOW FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(13) APPLICANT NAME: Virgin Islands Telephone Corporation

(14) STREET ADDRESS LINE NO. 1: Box 6100

(15) STREET ADDRESS LINE NO. 2:

(16) CITY: St. Thomas | (17) STATE: VI | (18) ZIP CODE: 00801

(19) DAYTIME TELEPHONE NUMBER (include area code): 340.715.8907 | (20) COUNTRY CODE (if not in U.S.A.):

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN): 0004556197 | (22) FCC USE ONLY

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE	(25A) QUANTITY
Waiver	BEA	1
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE	FCC USE ONLY
7,365.00	7,365.00	
(28A) FCC CODE 1	(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	

SECTION D – CERTIFICATION

CERTIFICATION STATEMENT
I, Nicholas Holland, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE [signature] DATE 11/20/08

SECTION E – CREDIT CARD PAYMENT INFORMATION

MASTERCARD____ VISA____ AMEX____ DISCOVER____

ACCOUNT NUMBER________________ EXPIRATION DATE________________

I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.

SIGNATURE________________ DATE________________

SEE PUBLIC BURDEN ON REVERSE FCC FORM 159 JULY 2005

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Virgin Islands Telephone Corporation
Emergency Petition for Waiver of Sections
32.2000(g)(2)(ii) and 36.621of the
Commission's Rules

VIRGIN ISLANDS TELEPHONE CORPORATION'S EMERGENCY PETITION FOR WAIVER AND TEMPORARY RELIEF

Pursuant to Section 1.3 of the Federal Communications Commission's rules, 47 C.F.R. § 1.3 (2007), the Virgin Islands Telephone Corporation ("Vitelco") requests an emergency waiver of Sections 32.2000(g)(2)(ii) and 36.621 of the Commission's Rules to the extent necessary to address the unique circumstances of the Virgin Islands, including the recent devastation inflicted by Hurricane Omar, and the unintended negative impact of these rules on Vitelco's high-cost loop support. Vitelco also requests that the Commission direct the Universal Service Administrative Company (USAC) to hold in abeyance until February 28, 2009, any reduction in high cost loop payments to Vitelco while the FCC considers Vitelco's Emergency Petition for Waiver to preserve the status quo. *See, e.g.*, Letter from Ms. Dana Shaffer, Wireline Bureau Chief, to Mr. Scott Barash, Universal Service Administrative Company, DA 08-602 (March 19, 2008). Because of the destruction of plant and equipment left in the wake of Hurricane Omar and the repairs necessitated by that destruction, Vitelco is currently under unprecedented financial strain. Absent relief from these accounting rules, Vitelco will face a significant and inequitable reduction in its high-cost loop support that could be financially disastrous for the company in its current state. These unique circumstances exacerbated by the devastation caused by Hurricane Omar constitute the "good cause" required for a waiver of these rules.

I. VITELCO IS EXPERIENCING DIFFICULT FINANCIAL CIRCUMSTANCES DUE TO HURRICANE OMAR.

On October 16, 2008, Hurricane Omar struck the U.S. Virgin Islands, causing millions of dollars in damage to island infrastructure. Damage was especially bad on St. Croix, the largest of the U.S. Virgin Islands. Included among the destruction was massive damage to the wireline infrastructure, which now must be repaired or replaced at significant cost. Indeed, though Vitelco carries windstorm and business interruption service, it is estimated that the network damage sustained from Hurricane Omar will result in a $2.5 million funding requirement related to the deductible portion of the Company's insurance coverage.

Vitelco will be affected by the around-the-clock clean-up and repairs required by Hurricane Omar into 2009. Vitelco's engineers and contractors estimate that full restoration of service will require two to three months, meaning that full service restoration may not occur until mid-January 2009. During this time period and immediately after, the cost of repairs and business interruption losses will impose a significant strain on the financial resources of the company.

The financial impact of repairs necessitated by Hurricane Omar is further exacerbated by the already strained finances of Vitelco. The Company's corporate parent, Innovative Communications Corporation, currently is involved in Chapter 11 bankruptcy proceedings, and the sale of assets, including Vitelco, is underway. Since being appointed by the Bankruptcy Court, the bankruptcy Trustee and his representatives have worked to stabilize the Company's financial operations. However, cash flow management continues to present on-going challenges due to demand on the Company's resources to correct past operational and financial management practices.

In addition, Vitelco is also incurring extraordinary expenses related to the statutorily mandated earnings investigation of the Company being conducted by the U.S. Virgin Islands Public Service Commission. The sum of the government's assessment for costs related to the rate case, which must be borne Vitelco, in addition to Vitelco's own expenses in the proceeding will exceed $1 million.

Because of the already strained financial resources of Vitelco, any additional demand on the company could impose a severe hardship on Vitelco's efforts to meet its cash flow requirements for day-to-day operations. Needless to say, such a result could have disastrous consequences for the company, the carrier of last resort in the U.S. Virgin Islands, and for consumers. The Commission must take action to avoid this result by granting the waiver requested herein.

II. THE COMMISSION'S ACCOUNTING RULES COULD IMPOSE A SIGNIFICANT AND UNINTENDED BURDEN ON VITELCO.

Unless the requested relief is granted, the accounting rules adopted by the Commission will result in a large and unintended financial burden on Vitelco by reducing Vitelco's high-cost loop support when Vitelco can least afford to suffer such a loss. This decrease in loop support is not due to any over-recovery by Vitelco or real world decrease in the need for support. Rather, it is caused by the unintended consequences of the Commission's rules and the unique circumstances of Vitelco, including its high estimated plant removal costs and its relatively low plant investment over the last several years. Specifically, the Commission's requirement that companies include the net salvage value in calculating their plant depreciation rates inappropriately skews Vitelco's per-loop support calculation under Part 36 of the Commission's Rules. The Commission should grant Vitelco a waiver to avoid this unintended result.

When applied to Vitelco, the "equal life group" ("ELG") rates result in a significant increase in the depreciation rate for certain of Vitelco's plant. Section 32.2000(g)(2)(ii) of the Commission's rules requires that, for purposes of telecommunications plant, companies should "apply such depreciation rate… as will ratably distribute on a straight line basis the difference between the net book cost of a class or subclass of plant and its estimated net salvage during the known or estimated remaining service life of the plant." 47 C.F.R. § 32.2000(g)(2)(ii). The "net salvage" component is made up of the salvage value of the plant minus the removal costs of the plant. This difference is then subtracted from the net book cost of the plant and that difference is divided by the original cost asset value to arrive at the net salvage ratio. Because Vitelco's removal costs are very high, however, the net salvage value of some of Vitelco's plant is *negative*, resulting in an increase in the depreciation rate. In Vitelco's case, this is especially true for aerial cable, for which the above calculation results in a very high plant depreciation rate.[1]

[1] The ELG depreciation rate for aerial cable incorporates a net salvage component of 2.00, a ratio that was calculated in manner demonstrated by the hypothetical figures below.

1.	Original cost asset value		$ 1,000,000
2.	Net salvage value		
	a.	Cost of removal	(1,100,000)
	b.	Salvage value	100,000
	c.	Net salvage value	$(1,000,000)
3.	Original cost minus net salvage [Line 1 – Line 2.c]		$ 2,000,000
4.	Net salvage ratio [Line 3 divided by Line 1]		2.00

The result of this accounting methodology in Vitelco's case has been a significant accumulation of depreciation[2] which, when paired with Vitelco's relatively low plant replacement and the associated low incurrence of removal costs over the last several years, results in a negative net plant investment. In a typical case, the net salvage component accrued over the life of the plant will be reduced by the actual removal costs associated with the plant retired. Therefore, theoretically, at the time an item of plant is retired, the associated plant and reserve balances should both reflect zero balances. However, in Vitelco's case, much of the Company's cable and wire facilities have remained in service beyond the anticipated service life and, consequently, the net salvage component (including the removal costs) has yet to be incurred and debited to the appropriate account. In addition, operating conditions in recent years have limited the additional cable and wire investment Vitelco has been able to make, the gross value of which would offset, in part, the net salvage component of accumulated depreciation.

The result of the conditions described above is that the cable and wire facilities investment reported by Vitelco for USF purposes is exceeded by the related accumulated depreciation resulting in a negative net plant balance. Under this condition the current study area unseparated loop cost algorithm at Section 36.621 of the Commission's rules incorporates a negative return component and eliminates the return on cable and wire facilities (C&WF) related materials and supplies investment and deferred tax assets. 47 C.F.R. § 36.621(1) (indicating that a "[r]eturn component for net unseparated Exchange Line C&WF subcategory 1.3 investment" shall be included in the calculation of the study area total unseparated loop cost). This produces

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2 As a particular asset category is depreciated using ELG rates, the related expense, including a net salvage component, is debited to Account 6561 Depreciation Expenses and an equal amount is credited to Account 3100 Accumulated Depreciation. As plant is retired, the retirement value of the plant is credited to the appropriate plant account and an equal amount is debited to Account 3100. Additionally, if costs of removal are incurred in excess of salvage value, as is the case with Vitelco's aerial cable assets, the cost of removal net of salvage also is debited to Account 3100.

an unusually low and unrealistic unseparated loop cost and decreased universal service funding for Vitelco. Indeed, Vitelco estimates that it will lose millions of dollars in high-cost funding if this rule is applied to its high-cost loop true-up adjustment and its loop support going forward.[3]

This outcome is not appropriate because the negative net plant balance is not the result of an over-recovery of invested capital but, rather, is the result of the incorporation of a net salvage component in depreciation rates as required under FCC regulations. As the Commission has recognized in other contexts, the incorporation of a net salvage component can have unintended consequences. In 2000, the Commission recognized that the use of a net salvage component for LECs in the pole investment portion of the pole attachment formula for cable operators could result in "negative or unusually low pole attachment rates. . .late in a pole's useful life."[4] This was because "pole removal costs typically exceed gross salvage proceeds by a wide margin" causing accumulated depreciation balances to exceed gross pole investment.[5] Seeking to avoid these perverse results, the Commission changed the formula to "eliminate the cause of the negative results."[6] A similar result is appropriate here for Vitelco to eliminate the perverse result caused by its accumulation of depreciation.

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3 Vitelco estimates that inclusion of depreciation reserves related to the net salvage component of C&WF depreciation rates in the USF study area loop cost algorithm results in a reduction in the Company's 2008 USF funding of approximately $1.448 million.

4 *Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd 6453, ¶ 64 (2000).

5 *Id.* ¶¶ 62-70.

6 *Id.* ¶ 68. On reconsideration, the Commission noted that its initial solution "failed to acknowledge that the utilities' recovery through depreciation of the future costs of removing poles should be reflected in the rates" and was not feasible given current accounting practices. It instead adopted a solution that allowed the use of gross figures "with the exception of the rate of return element of the carrying charges which is always a net calculation" in circumstances where net pole investment is zero or negative. *See Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, ¶¶ 29-42 (2001).

III. THE ABOVE CIRCUMSTANCES CONSTITUTE "GOOD CAUSE" FOR A WAIVER OF SECTIONS 32.2000(G)(2)(II) AND 36.621 OF THE COMMISSION'S RULES.

The Commission can grant a waiver of any of its rules "for good cause shown." *See* 47 C.F.R. §1.3 (2007). Under this standard, the Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest[7] and may take into account "considerations of hardship, equity, or more effective implementation of overall policy."[8]

The circumstances here clearly meet this standard. Vitelco is currently under tremendous financial strain because of damages sustained from Hurricane Omar, the extraordinary expenses related to the U.S. Virgin Islands Public Service Commission rate review proceeding, and the demand on resources to correct past operational and financial management practices. Any further burden on Vitelco's finances could have disastrous impacts on Vitelco and its customers. Because the accounting rules in this situation lead to an inappropriate result, the blind imposition of the Commission's accounting rules would have a negative impact on the public interest with no attendant benefit. Thus, a waiver would better serve the public interest and should be granted.

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7 *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

8 *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

In addition, while the Commission considers Vitelco's waiver request, it should instruct USAC to hold in abeyance until February 28, 2009, any adjustments to high cost loop payments related to the unintended negative impact of the Commission's Rules as addressed by this petition. Such action is necessary to maintain the status quo and avoid the hardships that reduced funding would cause during the consideration of this request and consistent with past Commission practice.

Respectfully submitted,

VITELCO

By: *__/s/ Thomas J. Navin______*

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November 19, 2008